

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On its Own Motion	)	
	)	Docket No. 03-0203
Amendment of 83 Ill. Adm. Code 773	)	

**VERIFIED REPLY COMMENTS OF MCI**

Pursuant to the schedule established at the status hearing in the above-captioned matter on April 24, 2003, WorldCom, Inc. d/b/a MCI ("MCI") respectfully submits these verified reply comments.

Initial comments were filed on June 19, 2003 by the Staff of the Illinois Commerce Commission ("Staff"), Verizon North Inc. and Verizon South Inc. ("Verizon"), and AT&T Communications of Illinois, Inc. ("AT&T"). The only issue in dispute concerns the notification section of Staff's Proposed Rule. The specific provision at issue is Section 773.140(b) of Staff's Proposed Rule. Section 773.140(b), which would apply to Incumbent Local Exchange Carriers ("ILECs") as well as Competitive Local Exchange Carriers ("CLECs"), provides as follows:

On an incoming call from a new customer requesting network access service, the company representative shall inform the customer that he has a choice of long distance providers and that different providers can be chosen for local toll (intraLATA) and long distance (interLATA) services.

Verizon argues that Section 773.140(b) should be stricken from the rules. While Verizon proffers several reasons why it should not be required to notify customers that they can choose a telecommunications carrier other than Verizon to provide local toll and long distance services, its main concern is that notification requirements should not prevent Verizon customers from receiving the benefits of new, bundled service packages.

For example, Verizon complains that “[t]he current restrictions are preventing Verizon in Illinois from effectively introducing its one-price package of services that includes unlimited toll. Thus, customers are prevented from learning about or purchasing very attractive services that are beneficial and desirable.” (Verizon Comments, p. 5).

Verizon’s argument is wholly without merit. First, Verizon’s objection is about what it perceives it can or cannot do under the existing notification rule, not Staff’s proposed Section 773.140(b). Verizon implies that Staff’s proposed Section 773.140(b) prohibits Verizon from marketing its bundled local and long distance products, but that is simply not true. By its explicit terms, proposed Section 773.140(b) applies only to incoming calls for new service and merely requires what Verizon acknowledges the FCC already requires -- that ILECs inform customers that they can choose different providers of local toll and long distance service. Nothing in Staff’s proposed rule prohibits Verizon from marketing bundled local and long distance service in SBC territory in Illinois, and nothing prevents Verizon from marketing bundled local and long distance service in its local service territory. Verizon does a lot of hand waving but fails to explain how Staff’s proposed rule prohibits it from marketing its bundled services.

Second, Verizon’s argument fails to acknowledge the significant advantage that Verizon and other ILECs maintain as the overwhelmingly dominant providers of local service in their home territories.<sup>1</sup> Since the vast majority of customers in Illinois have their local service provided by ILECs, those ILECs have on-going, regular contact with

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<sup>1</sup> The Commission reported as of year end 2002, of the approximately 8.7 million retail “plain old telephone service” lines in Illinois, ILECs provided service to approximately 7 million lines, or 81 percent, while CLECs provided service to approximately 1.7 million lines, or 19 percent. *Annual Report on Telecommunications Markets In Illinois*, report of the Illinois Commerce Commission submitted to the Illinois General Assembly pursuant to Section 13-407 of the Illinois Public Utilities Act on May 28, 2003 (“Illinois Telecommunications Market Report”), p. 9.

those customers via the bills that they render on a monthly basis in addition to the calls the ILECs receive from customers with service or billing related questions. Because of the ILECs' entrenched relationships and frequent contact with the customers in their local territories, ILECs maintain a significant advantage in being able to easily market any products and services they wish to those existing customers.

To understand the magnitude of the advantage maintained by the ILECs, one need only look to the phenomenal success that RBOCs have enjoyed in quickly gaining long distance market share once they receive authority to provide in-region long distance service. In New York, Verizon claims to have achieved a 30 percent share of the residential long distance market within two and one-half years of securing in-state long distance authority from the FCC on December 22, 1999.<sup>2</sup> In an April 2003 investor briefing, SBC reported that across the six states where SBC has had in-state long distance authority the longest,<sup>3</sup> SBC enjoys an astonishing 43 percent market share overall and about a 50 percent market share for "consumer" lines. In that same investor briefing, SBC reported that it had added 1.5 million long distance customers in the first quarter of 2003 alone, and was serving a total of 7.6 residential long distance customers.<sup>4</sup> SBC further reported in California that it had captured by April 21, 2003 a 13 percent retail consumer long distance penetration and 10 percent overall long distance penetration in

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<sup>2</sup> See Verizon Investor Relations News & Information Report, *Strong Operational Results Highlight Second-Quarter Financial Performance at Verizon Communications*, July 31, 2002. This document can be accessed on Verizon's website at: [http://investor.verizon.com/news/VZ/2002-07-31\\_X668027.html](http://investor.verizon.com/news/VZ/2002-07-31_X668027.html). See also Morgan Stanley Equity Research, "Does Long Distance Make Cents for the Bells," November 2, 2001, p. 2.

<sup>3</sup> Texas, Missouri, Oklahoma, Kansas, Arkansas, and Connecticut.

<sup>4</sup> SBC Investor Briefing, April 24, 2003, p. 7. This document can be accessed on SBC's website at: [http://www.sbc.com/Investor/Financial/Earning\\_Info/docs/1Q\\_03\\_IB\\_FINAL.pdf](http://www.sbc.com/Investor/Financial/Earning_Info/docs/1Q_03_IB_FINAL.pdf).

that state – a feat achieved in just over 4 months from the December 19, 2002 FCC approval of SBC’s California long distance application. By contrast, FCC data show that MCI did not achieve a 20 percent market share until 1994, a decade after divestiture, and never achieved a 30 percent market share.<sup>5</sup>

Simply put, Verizon and other ILECs do not need additional flexibility to be able to effectively market long distance services. ILECs have demonstrated their ability to leverage the frequent customer contacts that are a byproduct of their continued local market power into one-sided opportunities to market RBOC long distance service. Not surprisingly, those one-sided marketing opportunities have assisted the RBOCs in gaining market share at a far greater rate than any previous new entrant in the long distance market.

Third, the ILECs embedded marketing advantage was greatly enhanced as a result of the FCC’s adoption of rules on June 28, 2003 that prohibit telemarketing of communications services to customers on the federal “do-not-call” list.<sup>6</sup> Starting in October of this year, those rules will generally prohibit a telecommunications carrier from marketing services to any customer that has registered on the do-not-call list. However, businesses with an Established Business Relationship or “EBR” are exempt from the telemarketing prohibition. The FCC has defined EBR as:

a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen

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<sup>5</sup> Statistics of Common Carriers, compiled by the Industry Analysis and Technology Division of the FCC, 2000/2001 Edition, Table 1.5, page 9. This report can be accessed on the FCC website at: [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/SOCC/00socc.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/SOCC/00socc.pdf).

<sup>6</sup> In the matter of *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket 02-278, Report and Order, adopted June 28, 2003, released July 3, 2003 (“Do Not Call Order”).

(18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

47 C.F.R. 64.1200(f)(3).

Thus, because ILECs will have an EBR with each of their local service customers, they will be able to engage in outbound telemarketing to those customers while telecommunications carriers that do not have an EBR will be prohibited from doing so. That means ILECs will not only enjoy frequent contact with their local service customers through billing and inbound customer serviced calls, the ILECs will also be able to outbound telemarket their services by virtue of the EBR while other carriers will be prohibited from doing so. This double-whammy gives ILECs an incredible advantage in marketing their own long distance services, which will not be available to other carriers.

Consumers were allowed to begin registering on the federal do-not-call list on Friday June 27, 2003 and by Monday June 30, 2003 some 13.6 million telephone numbers had been registered.<sup>7</sup> The agency charged with supervising the national do-not-call list, the Federal Trade Commission, expects the do-not-call list to grow to 60 million telephone numbers.<sup>8</sup> Clearly, the ability of telecommunications carriers without EBRs with customers will be greatly hindered since they will be unable to engage in cost effective marketing of products and services via outbound telemarketing to telephone numbers registered on the do-not-call list.

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<sup>7</sup> "10 Million Sign Up for Do-Not-Call List," Washington Post, June 30, 2003.

<sup>8</sup> *Id.*

For all of the foregoing reasons, it is critical to competition that the Commission keep in place intraLATA presubscription rules that allow for, maintain and promote effective competition. The Commission should not, as Verizon would have it do, provide ILECs additional competitive advantages when they already enjoy a heavily one-sided advantage in marketing services to their customers. The Commission should not eliminate or water-down Staff's proposed Section 773.140(b). Rather, the Commission should buttress Section 773.140(b) in a way that neutralizes to the extent possible the overwhelming marketing advantages that the ILECs have by virtue of their local market power. Consistent with policy goals of the Illinois Public Utilities Act to promote timely, fair and effective competition, MCI recommends that Staff's proposed Section 773.140(b) be deleted and replaced with the following:

- (b) For an incoming call for new service, Incumbent Local Exchange Carriers, as defined in Section 13-202.5 of the Illinois Public Utilities Act, shall provide the following information before either asking for the customer's presubscription selections and/or marketing its own local toll (intraLATA) and long distance (interLATA) services:
  - (1) The ILEC shall inform the customer that they have a choice of providers, specifying that they may choose different providers for local, local toll and long distances services.
  - (2) The ILEC shall offer to read a random list of other carriers that provide local, local toll and long distance services.
- (c) The information provided to the customer under section (b) shall be provided in clear and neutral language and in a manner that does not attempt to influence customers regarding their selection(s) of carriers.
- (d) Once the customer indicates his or her selection of a carrier or carriers, the ILEC service representative shall not solicit the customer further.

MCI submits that this modification to Staff's proposed Section 773.140(b) will preserve existing competition and help further fair and effective competition in the local toll and long distance markets in Illinois. If the Administrative Law Judge and the Commission are not inclined to adopt this change, in the alternative and at the very least, AT&T's proposed changes should be adopted. In any event, MCI concurs in AT&T's suggestion that any reference to PIC freezes be removed from the rule. The Commission is intimately familiar with the anticompetitive mischief that PIC freezes have been used to create in the past.<sup>9</sup> The Commission should avoid the possibility that its rules will be used as an excuse by ILECs to perpetuate any further anticompetitive mischief.

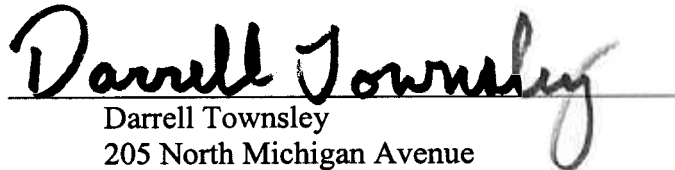
Wherefore, for all of the foregoing reasons, MCI respectfully requests that the Administrative Law Judge and the Commission issue an order and presubscription rule consistent with the recommendations contained in these comments.

Respectfully submitted,

WorldCom, Inc. d/b/a MCI

Dated: July 11, 2003

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<sup>9</sup> See *MCI et al. v. Illinois Bell Telephone Company*, Order, Docket Nos. 96-0075 and 96-0084 (Consol.), April 3, 1996 (order finding Ameritech's PIC freeze information inserts misleading, discriminatory and anti-competitive by establishing unfair and unreasonable barriers to interexchange carrier intraLATA competition); see also *MCI v. Illinois Bell Telephone Company*, Order, Docket 97-0540, December 17, 1997 (order directing Ameritech to cease and desist from improper actions by Ameritech representatives on three-way calls initiated to lift PIC freezes – actions which impede the ability of carriers like MCI to fairly and efficiently compete for local toll customers in Illinois).

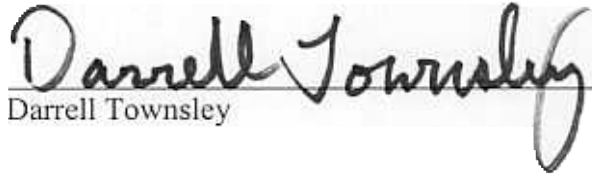
STATE OF ILLINOIS

COUNTY OF COOK

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**VERIFICATION**

Darrell Townsley, being first duly sworn, deposes and states that he is an attorney representing WorldCom, Inc. d/b/a MCI, that he has read the Verified Reply Comments of MCI in Illinois Commerce Commission Docket No. 03-0203 and knows the contents thereof, and that the statements therein contained are true, to the best of his knowledge, information and belief.

  
Darrell Townsley

SUBSCRIBED AND SWORN to  
before me this 11<sup>th</sup> day of July, 2003.

  
Notary Public

My commission expires on 07-28-05.





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**NOTICE OF FILING**

Please take notice that this 11<sup>th</sup> of July, 2003, I filed the Verified Reply Comments of MCI in the above-captioned docket with the Chief Clerk of the Illinois Commerce Commission, Elizabeth A. Rolando, 527 E. Capitol, Springfield, Illinois 62701 via the Commission's e-docket system, a copy of which is hereby served on you.

  
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Darrell Townsley

**CERTIFICATE OF SERVICE**

I, Darrell Townsley, certify that I caused to be served via electronic mail a copy of the Verified Reply Comments of MCI in the above-captioned docket, together with a Notice of Filing, upon all parties on the attached service list on this 11<sup>th</sup> day of July, 2003.

  
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